

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

John R. Ford (Decedent) became a local miscellaneous member of CalPERS on November 11, 1985, through his employment with the City of Inglewood. He was last employed as a Senior Building Inspector with the City of Inglewood. Decedent retired on January 1, 2014. When he applied for retirement, he completed a Service Retirement Election Application and named his spouse, Respondent Debra Shelton-Love (Respondent Shelton-Love), as the Option 1 Balance of Contributions and lump sum Retired Death Benefit beneficiary.

Decedent passed away on February 26, 2018. CalPERS received notice of Decedent's death on March 1, 2018, when Respondent Shelton-Love contacted CalPERS to report his passing.

Thereafter, on March 8, 2018, CalPERS was contacted by Decedent's daughter, Respondent Johnetta Lamar Ford (Respondent Johnetta Ford), requesting a death claim packet to be mailed to her home. On March 13, 2018, CalPERS sent a claim form to Respondent Johnetta Ford and also spoke with her on the phone. Respondent Johnetta Ford informed CalPERS that Decedent and Respondent Shelton-Love were not married at the time of his death, and that she found divorce documentation indicating they were divorced in 2015.

Respondent Johnetta Ford sent a copy of the Judgment for Dissolution of Marriage (Judgment) to CalPERS on March 14, 2018, showing that Decedent and Respondent Shelton-Love were divorced on July 14, 2015. The Judgment from the Los Angeles County Superior Court indicated the divorce was entered as an uncontested default judgment.

Two days later, on March 16, 2018, Respondent Shelton-Love contacted CalPERS to report that she had not received the death claim packet that was supposed to be mailed to her. Staff returned her call on March 21, 2018, leaving a voice message indicating that CalPERS received notice that she was divorced from Decedent effective July 14, 2015. She was informed that pursuant to California Government Code section 21492 the divorce revoked the original designation on file, and that Decedent's survivor benefits would be payable to the next entitled beneficiary in accordance with Section 21493.¹ For this reason, CalPERS informed Respondent Shelton-Love that it would not be mailing her an application to receive Decedent's CalPERS survivor benefits. Respondent Shelton-Love indicated that she was not aware of any divorce decree and wanted further explanation from staff regarding CalPERS' statement that she was not Decedent's beneficiary.

CalPERS' staff once again explained to Respondent Shelton-Love that CalPERS received the Judgment from the Los Angeles County Superior Court providing that her marriage to Decedent was ended by divorce on July 14, 2015, and that the divorce revoked any benefits she was entitled to receive. She was also advised that if she and

¹ All statutory references are to the Government Code unless otherwise noted.

Decedent had a marital property settlement agreement, to submit it for review; otherwise, she did not appear to be a beneficiary and would not receive a claim packet from CalPERS. Respondent Shelton-Love responded to CalPERS' communication and insisted that she was not divorced from Decedent at the time of his death and that the documentation CalPERS received was not real.

On August 9, 2018, CalPERS received correspondence from Respondent Shelton-Love claiming to be the rightful and lawful beneficiary to Decedent's estate. Enclosed with her correspondence were copies of Decedent's Last Will and Testament, Decedent's death certificate, their marriage license, copies of her 2015 and 2016 tax returns, and a benefit letter from the County of Los Angeles (County) showing she and Decedent were covered as a married couple under her health insurance with the County.

Decedent's Last Will and Testament, dated September 4, 2006, stated he was an unmarried single man, had four living children, Teneen Ford, Johnetta Ford, Jermaine Ford and John Ford, and referred to Respondent Shelton-Love as his common law wife. Decedent named Respondent Shelton-Love as the executor of his estate and bequeathed the residue of his estate to her as the executor and beneficiary.

CalPERS received Respondent Shelton-Love's application for survivor benefits on October 4, 2018. The application indicated she and Decedent were married as of October 28, 2006, and that he was survived by two children, Teila and Soraya Love. Respondent Shelton-Love also provided CalPERS with invoices for Decedent's funeral costs and a copy of his death certificate.

CalPERS informed Respondent Shelton-Love in writing dated October 29, 2018, of its completed beneficiary determination. Respondent Shelton-Love was advised of the revocation of the designation on file due to her divorce, and that Decedent never submitted a new designation that would name her as a beneficiary, and as such, benefits were payable statutorily to Decedent's next of kin. She was informed that she could pursue a community property (CP) claim on Decedent's account for the duration of their marriage while Decedent was employed as a member of CalPERS. By virtue of these facts, CalPERS determined that Respondent Johnetta Ford, Respondent John P. Ford (Respondent John Ford), Respondent Jermaine Ford, and Respondent Teneen Ford (collectively "Ford Respondents"), as Decedent's children and next of kin, would receive his CalPERS survivor benefits.

CalPERS received correspondence from Respondent Shelton-Love claiming to be the rightful and lawful beneficiary to Decedent's estate under California Domestic Partnership law on November 20, 2018. In her letter, she also stated her intent to pursue a CP settlement and requested a CP hold be placed on Decedent's account in order to resolve the outstanding CP issues. In support of the claim, Respondent Shelton-Love included copies of her 2015 and 2016 tax returns, the benefit letter from the County showing Decedent was covered under her health insurance, and a consent form from Kaiser showing she was making medical decisions on his behalf.

On November 28, 2018, CalPERS' survivor benefits staff informed the CalPERS' community property unit of the receipt of the CP hold request. On December 17, 2018, staff from CalPERS' CP unit sent Respondent Shelton-Love correspondence advising

her a CP hold had been placed on Decedent's account and provided her with CP publications to review and requested she submit a further order which would address any CP interest she may have in Decedent's retirement benefits.

CalPERS staff sent a letter to Respondent Johnetta Ford on December 17, 2018, to inform her of the CP hold that was placed on the account and that benefits could not be paid to the Ford Respondents until the CP issues were resolved.

Respondent Shelton-Love filed a Motion to Set Aside Default and Default Judgment in the dissolution matter, *Love v. Ford*, Los Angeles County Case No. BD606569 on July 23, 2019. The motion stated that Respondent Shelton-Love filed the original dissolution action, but never served it and someone forged her signature to have the default entered. It also stated she was unaware of the Judgment until she was informed by CalPERS in October 2018.

On August 9, 2019, CalPERS staff sent Respondent Shelton-Love a follow-up letter to request documentation regarding her CP claim.

CalPERS received correspondence from Respondent Shelton-Love dated September 10, 2019, in response to the follow-up letter. She informed CalPERS that within 90 days it was her intent to provide a filed order that would detail the specific nature and extent of Decedent's retirement benefits to which she was entitled to receive.

The Hon. Alison Mackenzie, Superior Court of California, County of Los Angeles, executed a Minute Order on September 30, 2019, which states "The Court orders the Default Judgment for Dissolution and the Request for Entry of Default set aside pursuant to Family Code § 2122." As a result of this Order, the Court affirmed that Respondent Shelton-Love and Decedent were lawfully married at the time of his death.

On October 28, 2019, Respondent Shelton-Love submitted a copy of the Minute Order to CalPERS and made a formal request for Decedent's CalPERS survivor benefits to be disbursed to her, stating that the order affirms that she was married to Decedent at the time of his death.

CalPERS staff researched documents filed with the Los Angeles County Superior Court, including transcripts from the September 30, 2019, hearing which resulted in Judge Mackenzie issuing the order setting aside Decedent and Respondent Shelton-Love's divorce.

Under Section 21490, subdivision (a), a member may "designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board." If a member has designated a beneficiary under Section 21490, the basic death benefit and the limited death benefit shall be paid to that designated beneficiary. (See Section 21531.) If a member had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order: (1) The decedent's spouse. (2) The decedent's natural or adopted children....(3) The decedent's parents. (4) The decedent's brothers and sisters. (See Section 21493(a))." If a deceased person had no effective beneficiary designation and there are no survivors in the groups listed in

Section 21493(a), CalPERS survivor benefits shall be paid to the estate of the Decedent. (See Section 21493(b))

After reviewing Decedent's file, the information submitted, the September 30, 2019 Order from the Los Angeles County Superior Court, and the PERL, CalPERS determined that since Decedent was still considered legally married to Respondent Shelton-Love at the time of his death, CalPERS survivors benefits payable from Decedent's account with CalPERS, which included a Option 1 remaining balance of contributions of \$112,352.25, a lump sum Retired Death Benefit of \$500.00 and a Prorata Retirement Allowance Benefit of \$3,942.00, should be paid exclusively to Respondent Shelton-Love in accordance with the statutory order per Section 21493.

On June 12, 2020, CalPERS sent formal determination letters to the Ford Respondents to advise them of CalPERS' determination to accept the Minute Order which set aside Decedent's divorce from Respondent Shelton-Love and to pay Decedent's survivor benefits exclusively to Respondent Shelton-Love.

The Ford Respondents appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on April 26, 2021. The Ford Respondents represented themselves at the hearing. Respondent Shelton-Love represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to the Ford Respondents and Respondent Shelton-Love. CalPERS explained the need to support their respective cases with witnesses and documents. CalPERS provided the Ford Respondents and Respondent Shelton-Love with copies of the administrative hearing process pamphlet. CalPERS answered the Ford Respondents' and Respondent Shelton-Love's questions and clarified how to obtain further information on the process.

CalPERS staff testified to the factual background as outlined above. CalPERS staff explained (1) the process for determining the proper beneficiary(ies), (2) the steps taken to ensure that the PERL's requirements for determining a beneficiary were followed, (3) the process for determining whether Respondent Shelton-Love had a CP interest in Decedent's CalPERS benefits, and (4) the basis for determining that the Los Angeles County Superior Court's September 30, 2018, Order which set aside Decedent and Respondent Shelton-Love's divorce required CalPERS to determine that Respondent Shelton-Love was Decedent's beneficiary for purposes of receiving his CalPERS survivor benefits. In this matter, because the Decedent was survived by his lawful wife, Respondent Shelton-Love, CalPERS argued it is legally required to distribute Decedent's CalPERS benefits to Respondent Shelton-Love. CalPERS argued that Respondent Shelton-Love was the proper beneficiary because she was named as a beneficiary in Decedent's Service Retirement Election Application, and that even if this designation was revoked by the Judgment, she would be the beneficiary under Section 21493 since she was considered his wife at the time of Decedent's death by virtue of the Judgment being set aside by the Los Angeles County Superior Court in 2019.

Respondent Shelton-Love testified on her own behalf. Respondent Shelton-Love testified that she did not recall filing for divorce, and that when CalPERS informed her of

the fact the Judgment had been entered, she took steps to have it set aside. Respondent Shelton-Love's testimony at this hearing was not entirely consistent with her testimony in the divorce proceeding; however, she testified that she continued to live with Decedent as husband and wife until he passed away and that she handled all of his affairs as his wife after he passed away.

Respondent Johnetta Ford and Respondent John Ford also testified at the hearing. They testified that they have many concerns regarding Respondent Shelton-Love receiving the Decedent's CalPERS survivor benefits. They testified that the Decedent and Respondent Shelton-Love had lived apart because their marriage was having problems. They testified that Decedent lived with Respondent Teneen Ford during this time. They also testified and argued that Respondent Shelton-Love presented many inconsistent statements; statements that were inconsistent from documents she submitted to CalPERS and also the testimony she gave at the administrative hearing. However, the Ford Respondents did not dispute that the Decedent and Respondent Shelton-Love lived together as husband and wife at the time of Decedent's death.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied the Ford Respondents' appeal. The ALJ found that Decedent and Respondent Shelton-Love's marriage was dissolved by the Judgment in 2015. However, the ALJ found that Respondent Shelton-Love successfully set aside the Judgment after a full evidentiary hearing in front of a Superior Court judge in 2019. Because Respondent Shelton-Love met her evidentiary burden of proving the Judgment was entered fraudulently, the legal result is that she was lawfully married to the Decedent at the time of his death. The ALJ concluded that this requires a finding that Respondent Shelton-Love was the legal beneficiary of Decedent's survivor benefits.

The ALJ did agree that the Ford Respondents have legitimate concerns regarding Respondent Shelton-Love's inconsistent statements and credibility; however, the ALJ found that CalPERS is bound by the order of the Superior Court to honor the marriage between the Decedent and Respondent Shelton-Love and to pay his survivor benefits accordingly.

In the Proposed Decision, the ALJ concludes that Respondent Shelton-Love is the proper recipient of Decedent's survivor benefits under either the Decedent's beneficiary designation in effect at the time of his death, or under Section 21493, as Decedent's surviving spouse.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

July 14, 2021

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